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Written statement* submitted by the Europe Third World Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Debt and austerity measures imposed on Greece violate the human rights of the Greek people and international law*

Since May 2010, Greece has been in structural adjustment.[1] To obtain loans from the International Monetary Fund (IMF), 14 member States of the eurozone "represented" by the European Commission, and the European Financial Stability Facility (now the European Stability Mechanism), Greece must implement the numerous austerity measures and mass privatisations listed in the memoranda concluded with its creditors in the "Troika" - now renamed "the Institutions" - comprising the European Central Bank, the IMF and the European Commission. The effect of these policies has been dramatic: in less than five years, the country has lost 25% of its GDP, the unemployment rate has tripled to 27% (60% among young people), millions of citizens have been plunged into poverty and public debt has risen, from 120% of GDP to 177% in June 2015. All this despite the fact that the IMF had stated in a confidential document dated March 2010 - i.e., before the first memorandum - that austerity policies would inevitably spell economic and social disaster and cause an explosion of debt.[2]

Despite this predictable setback and the overwhelming victory of the "No" camp in the 5 July 2015 referendum, on 13 July the creditors forced on the Greek Prime Minister a one-sided agreement that prolongs the austerity measures and violates the sovereignty of the Greek State. The creditors' chief means of exerting pressure has not changed: the Greek Government must submit to their diktat if it is to obtain the necessary funding to repay previous debts.

Anticipating the debt blackmail, the President of the Greek Parliament, Zoe Kostantopoulou, set up the Truth Committee on Public Debt on 4 April 2015. Made up of 30 Greek and international experts, including Cephas Lumina, a former United Nations expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, and coordinated by Dr. Eric Toussaint, spokesman for the CADTM network, the Committee was mandated to analyse the whole history of Greek indebtedness and to identify what part or proportion of the debt can be defined as illegitimate, illegal, odious, or unsustainable. The Committee submitted its preliminary report on 18 June 2015. Its conclusions are clear: the debt claimed from Greece in 2015 is totally unsustainable and much of it is illegal, illegitimate and odious.[3]

To keep this short, we will confine ourselves here to the debts contracted since 2010 under the memoranda imposed by the Troika. They account for 85% of Greece's total debt and arise from the so-called "bailout loan" of 2010 and 2012, whose real purpose was to bail out two dozen Greek and foreign banks (notably French, German and Dutch) which had speculated on Greek debt. The Committee report shows that over 80% of the €240 billion lent to Greece under the two memoranda of 2010 and 2012 never even got to Greece but were shared out as direct repayments to these few big private banks. Thus these illegitimate and odious loans shielded the banks from the fallout from the bursting of the private credit bubble that they had themselves created (see chapters 1 and 2 of the report).

The loans from the Troika are also illegal, because they are conditional on specific austerity measures (the memoranda) that directly violate Greek, European and international law. Chapter 6 of the report establishes a direct link between the creditors' demands and multiple violations of human rights. These violations are not collateral damage from recommendations of a general nature. As shown in the report, they are a predictable outcome, and one in some cases deliberately sought by the creditors with the connivance of the Greek authorities, thereby making the debt illegal, illegitimate and odious. In evidence of this, the report lists the basic human rights (rights to work, health, education, housing, social security, self-determination and justice, as well as the rights to freedom of expression and protection from discrimination) that have been directly violated by the specific measures contained in the memoranda, and explains, for each of these areas, the impact of the measures and the various national, European and international instruments violated.

* This statement was prepared in collaboration with the Committee for the Abolition of Third World Debt (CADTM)

Two of the instruments violated are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Charter of the United Nations. All the creditor States are parties to the ICESCR and the Charter. Chapter 7 of the report recalls that the obligations under the ICESCR are binding on every State outside the national territory, as confirmed by the Committee on Economic, Social and Cultural Rights.[4] All States must also prevent any non-State actor whose conduct the State is in a position to influence from impairing the enjoyment of such rights. This is relevant, in particular for the eurozone member States as lenders through the Institutions. As for the IMF, as an international organisation it is bound by any obligations incumbent on it under general rules of international law, under its constitution or under international agreements to which it is party.[5] The IMF is required to refrain from steps that would undermine the possibility of a borrowing State complying with its own national and international human rights obligations,[6] as stated in the United Nations Guiding principles on foreign debt and human rights: "International financial organizations and private corporations have an obligation to respect international human rights. This implies a duty to refrain from formulating, adopting, funding and implementing policies and programmes which directly or indirectly contravene the enjoyment of human rights."[7] In addition, the IMF, as a specialised agency of the United Nations, is bound by the general aims and principles of the United Nations Charter, including respect for human rights and fundamental freedoms.[8]

Given the multiple human rights violations identified in this audit, the Human Rights Council should urge Greece and its creditor States and institutions to take the following steps:

(a) Halt the austerity measures in order to comply with their own international commitments such as the ICESCR and the Charter of the United Nations.

(b) Immediately suspend payment of Greece's debt, which is clearly unsustainable, in order to give priority to respect for human rights. Greece is now unable to repay its debt without seriously compromising its ability to fulfil its basic human rights obligations. Human rights, we wish to recall, prevail over other State obligations such as obligations to creditors, under Article 103 of the Charter of the United Nations. In this respect, Greece could legally use the argument of necessity as recommended in chapter 9 of the report of the Audit Commission. According to article 25 of the draft articles on Responsibility of States for internationally wrongful acts, adopted by the International Law Commission of the United Nations,[9] the term "necessity" is used to denote those exceptional cases where the only way a State can safeguard an essential interest threatened by a grave and imminent peril is, for the time being, not to perform some other international obligation of lesser weight or urgency. Given the economic, social and humanitarian crisis in Greece, the conditions for invoking the state of necessity are met.

(c) Unconditionally cancel illegal, illegitimate and odious debt, as identified in the report. Greece could legally take a unilateral act of repudiation. Such a decision is justified by peremptory considerations of justice and equity, but is also founded on sovereignty and self-determination. This is the case where there is an absence of good faith, based on article 26 of the Vienna Convention on the Law of Treaties, which provides that treaties are binding on the parties and must be performed in good faith. The bad faith of the creditors consisted in rendering Greece financially subservient and imposing measures affecting the fundamental rights of the Greek people, in violation of national, European and international law. Bad faith was also evident in the ultimate goal of the creditors, which was not to help the Greek people but rather, among other things, to transform private debt into public debt and thus save the big private banks. Moreover, the pressure placed on the Greek authorities since 2010 is a form of coercion: when a State is forcibly made to violate its human rights obligations in order to obtain loans, and especially when compelled to surrender great swaths of its legislative and socio-economic sovereignty, it is considered to have given consent under coercion. Such coercion is itself a ground for invalidity, under article 52 of the Vienna Convention on the Law of Treaties. Coercion has also taken the form of the imposition of stringent and illegal conditionalities, together with interference in the democratic process in Greece (e.g., by repeated threats of exclusion from the eurozone). This type of economic coercion can also be characterised as unlawful intervention in the internal affairs of a State, which, although it does not vitiate consent, may nevertheless be grounds for denunciation of a treaty or an obligation under that treaty (such as payment of debts), under article 56, paragraph 1 (b), of the Vienna Convention on the Law of Treaties.

Lastly, the fact that creditors have committed internationally wrongful acts, imposing on the Greek Government several measures that violate fundamental rights, justifies Greece taking counter-measures on the basis of customary international law and articles 49 ff of the draft articles on Responsibility of States for internationally wrongful acts. As discussed in chapter 9 of the report, when a country becomes the target of actions that are known to harm its economy (especially to the benefit of its lenders) and the livelihood of its people, it may resort to lawful countermeasures. Greece is therefore entitled to pertinent countermeasures, notably by repudiating debts to the Troika.

The Human Rights Council could also ask the International Court of Justice (ICJ) to give an opinion on the compatibility of agreements concluded between Greece and its creditors with public international law.

1 So-called structural adjustment programs, imposed by the IMF and World Bank on indebted developing countries for more than 40 years - but also on countries in the North in recent years - regardless of their social and economic conditions, consist in "devaluation of the local currency, reduction of government expenditures for public services, elimination of price controls, limits on earnings, reduction of trade regulations and currency controls, privatizations, domestic credit restrictions, reduction of the role of the state in the economy, expansion of the export sector and decrease of imports." *Debt and human rights*, Melik Özden, CETIM, Geneva, December 2007.

2 Criminal case file forwarded to the Greek Parliament by the prosecutor for economic crimes (September-November 2012), regarding the statements of the former representative of Greece to the IMF, P. Roumeliotis: IMF Strictly confidential office memorandum: "Board meeting on Greece's request for a Stand-By Arrangement (SBA)" - May 9, 2010 (http://gesd.free.fr/imfinter2010.pdf)

3 The full report is available at http://cadtm.org/IMG/pdf/Report.pdf

4 See, for example, general comments Nos. 11 and 15 of the Committee on Economic, Social and Cultural Rights, on the right to food and the right to water respectively.

5 ICJ, *Interpretation of the agreement of 25 March 1951 between the WHO and Egypt*, advisory opinion of 20 December 1980, ICJ Reports 1980, § 37, pp. 89-90.

6 Sands, P. and Klein, P. (2001), *Bowett's Law of International Institutions* (5th edition, Sweet & Maxwell), p. 459.

7 Adopted by the Human Rights Council in July 2012, A/HRC/20/23, § 9.

8 Charter of the United Nations, Articles 57 and 63.

9 See Yearbook of the International Law Commission, 2001, Vol. II (2), and corrigendum.